

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

Seventh-Day Adventist Community Health Serv.  
of Greater NY

File No. EB-08-NY-0146

Licensee of Station W32DF  
Hempstead, New York  
Facility ID # 155

NAL/Acct. No. 200932380005

FRN: 0011503620

**FORFEITURE ORDER**

**Adopted:** February 18, 2010

**Released:** February 22, 2010

By the Regional Director, Northeast Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of fifteen thousand two hundred dollars (\$15,200) to Seventh-Day Adventist Community Health Serv. of Greater NY (“SDACH”), licensee of Low-Power Television (LPTV) station W32DF in Hempstead, New York, for willfully and repeatedly violating Sections 1.903(a), 1.903(b), and 11.35(a) of the Commission’s Rules (“Rules”) by operating with an unauthorized antenna model and orientation, operating from an unauthorized location, and failing to install required Emergency Alert System (EAS) equipment. In this *Order*, we consider SDACH’s arguments that the forfeiture amount for operation at an unauthorized location should be cancelled or reduced because it was the result of an inadvertent error and that the forfeiture amounts for the other violations should be cancelled or reduced in light of the SDACH’s history of compliance with the Commission’s Rules.

**II. BACKGROUND**

2. On April 9, 2008, The FCC’s Enforcement Bureau received a complaint from a licensed New York area broadcaster alleging that Station W32DF was operating with an unauthorized antenna model and orientation, resulting in an unauthorized radiation pattern which was causing harmful interference to its station. The complaint was referred to the FCC’s New York Office for further investigation.

3. When the agents inspected the station on April 24, 2008, SDACH was authorized by its license, File No. BLTTL-20080201BPD, to operate LPTV station W32DF, Hempstead, New York, on channel 32 located at a transmitter site in Hicksville, New York. Specifically, Station W32DF’s construction permit, File No. BPTTL-20040910AAX (expired), and the then-current station license to cover the construction permit, authorized operation at antenna coordinates 40° 45’ 27” north latitude and 73° 32’ 58” west longitude, with a Micro Communications Inc. (MCI) Model 955314 directional antenna<sup>2</sup>

<sup>1</sup> 47 C.F.R. §§1.903(a), 1.903(b), 11.35(a).

<sup>2</sup> According to specifications, the MCI Model 955314 has 4 “bays” or vertical levels, with each “bay” consisting of two panel antennas, oriented outward at 90° relative to each other. This produces two relatively narrow overlapping major lobe directions 90° apart, resulting in a “narrow cardioid” radiation pattern with a general pattern direction at 45°. The model 955314 is a standard antenna, antenna ID 20059, found in the FCC’s CDBS Public Access Antenna Database. The standard radiation pattern, or Relative Field Polar Plot, for the model 955314 shows the major lobe directions at 0°

and major lobe directions of 40° and 130°, consistent with SDACH's proposal in its underlying application for construction permit.<sup>3</sup> W32DF's application for construction permit included a signed Engineering Statement proposing use of the model 955314 antenna, and a map of the station's predicted service contour, with major lobe directions at 40° and 130°, and a general pattern direction facing easterly at 85°. The contour overlap and interference studies included in the application were based on this proposed pattern. On its application for broadcast station license to cover the construction permit, File No. BLTTTL-20080201BPD, filed February 1, 2008, SDACH certified in Section II that "apart from changes already reported, no cause or circumstance has arisen since the grant of the underlying construction permit which would result in any statement or representation contained in the construction permit application to be now incorrect." SDACH certified in Section III and Exhibit 7 of the license application that W32DF was constructed as authorized in the underlying construction permit except for a change of ERP from 20 kW to 3 kW. SDACH did not report any changes in the antenna model or orientation.

4. On April 24, 2008, agents from the Commission's New York Office conducted an inspection of LPTV station W32DF's antenna and transmitter site located at 34 Charlotte Ave, Hicksville, New York 11801, which is approximately 700 feet from the station's authorized location. The station was observed to be broadcasting on television channel 32 from a single-panel directional antenna mounted atop a 34-meter tower at coordinates 40° 45' 29.9" north latitude and 073° 32' 49.2" west longitude, approximately 0.225 km (737 ft.) east-northeast of the authorized location. The agents observed that there was no EAS decoder installed as required for a LPTV station. The agents determined that the panel antenna was oriented at approximately 230° relative to true North. The agents then took calibrated field strength measurements of the station's signal at various points around the W32DF transmitter, which indicated extremely low readings in all eastern directions, and the strongest readings to the southwest. By far, the strongest signals measured were at 217° and 246°, confirming an unauthorized radiation pattern consisting of a single lobe direction of approximately 230°.

5. On May 1, 2008, an agent spoke by telephone to SDACH's consulting engineer for W32DF, and advised him that the W32DF antenna was pointed in the wrong direction and was the wrong type. The engineer stated that the station did a recent installation and was hoping to get its digital channel 20 on the air soon. He stated that the licensee did not obtain the antenna authorized in its construction permit and that the actual antenna as installed is a single panel antenna oriented at approximately 220° to 230° as is specified in the station's *digital* construction permit.<sup>4</sup> He stated that he would have the station turned off until he could file a change with the FCC for antenna type and orientation that would produce the allowable contour and that he would then turn the antenna to the authorized direction.

6. Also on May 1, 2008, the agent spoke by telephone to SDACH's director, who stated that he was also the W32DF station manager. The agent advised him of the interference complaint, the violations observed for the wrong antenna type and orientation. The director stated that he and the consulting engineer were both at the transmitter site recently, where the engineer directed the installation of a new transmitter and antenna by an antenna installation company. The agent requested that the director fax to the New York Office all available information regarding the exact model and directional

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and 90°. W32DF's application for construction permit specifies use of an MCI 955314 antenna with a 40° antenna rotation, resulting in major lobe directions at 40° and 130°, with a general pattern direction facing easterly at 85°.

<sup>3</sup> The Construction Permit and Station License were originally issued with a typographical error, stating the major lobe directions as 40° and 230°. This is inconsistent with the construction permit application and, in fact, is not possible. With lobes at 90° apart for the MCI model 955314 and a 40° rotation, the resulting major lobe directions must be at 40° and 130°. The error was corrected by Media Bureau's Video Division on June 26, 2008, and corrected license was mailed to SDACH.

<sup>4</sup> SDACH has a construction permit to operate a digital low power TV station on Ch. 20 in Hempstead, NY (W20CQ-D, Facility ID # 168738).

orientation of the antenna, and when and who installed it.

7. On May 5, 2008, the agent again spoke with SDACH's director, who stated that the station was still on the air, and would be shut down later in the day. The agent advised him that the antenna site is over 700 feet from the authorized site, and requires application to the FCC to change the license to the correct coordinates. In response to questions, the director also confirmed that W32DF did not have any EAS equipment installed.

8. The New York Office received a fax from the director on SDACH letterhead which included the specification sheet for the antenna installed (SIRA model UTV-01/E UHF Panel Antenna), an estimated bill for the antenna and an Elettronica transmitter, and a copy of the W32DF station license. The specifications for the UTV-01/E antenna show that it is a single panel directional antenna which produces a narrow single lobe radiation pattern. The director also included in the fax contact information for the antenna installation company.

9. On April 22, 2009, the New York Field Office issued a Notice of Apparent Liability for Forfeiture ("NAL") in the amount of \$19,000 to SDACH for operating with an unauthorized antenna model and orientation, operating from an unauthorized location, and failing to install required EAS equipment.<sup>5</sup> In its response, SDACH does not dispute the findings in the *NAL*, but requests that we cancel or reduce the proposed forfeiture amount for operation at an unauthorized location because it relied on the coordinates provided in its lease with the tower owner. In addition, SDACH requests that we cancel or reduce the proposed forfeiture in light of SDACH's history of compliance with the Commission's Rules.

### III. DISCUSSION

10. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>6</sup> Section 1.80 of the Rules,<sup>7</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* ("Forfeiture Policy Statement").<sup>8</sup> In examining SDACH's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>9</sup> We have considered SDACH's response to the *NAL* in light of these statutory factors and have found that a reduction in the forfeiture to \$15,200 is warranted for the reasons discussed below.

11. Section 1.903(a) of the Rules provides that stations in the Wireless Radio Service must be used and operated only in accordance with the rules applicable to their particular service and with a valid authorization granted by the Commission. Section 1.903(b) provides that the holding of an authorization does not create any rights beyond the terms, conditions and period specified in the authorization. SDACH's station license authorized SDACH to operate station W32DF at antenna coordinates 40° 45' 27" north latitude and 73° 32' 58" west longitude. At the time of the inspection on April 24, 2008, Commission agents determined that the station was broadcasting from an antenna that was not located at the authorized coordinates.

<sup>5</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200932380005 (Enf. Bur., New York Office, rel. April 22, 2009).

<sup>6</sup> 47 U.S.C. § 503(b).

<sup>7</sup> 47 C.F.R. § 1.80.

<sup>8</sup> 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

<sup>9</sup> 47 U.S.C. § 503(b)(2)(E).

12. In its response to the *NAL*, SDACH does not dispute that the coordinates were inaccurate, but explains that the coordinates provided to the Commission in its applications were based on the coordinates in its lease with the owner of the building where the antenna was located. SDACH claims that the forfeiture therefore should be cancelled because the error was inadvertent and did not cause any harm. We disagree. Applicants and licensees are required to provide accurate information to the Commission at all times.<sup>10</sup> The construction permit and license applications (FCC Forms 347 and 346) submitted by SDACH specifically state in Section III (Engineering) that the applicant must “[e]nsure that the specifications below are accurate.” The question requiring the applicant to provide the coordinates for the antenna structure further specifies that the coordinates must be provided using NAD27 (North American Datum 1927). SDACH had an obligation to verify the accuracy of the coordinates it provided on its application and it was not enough to rely on the coordinates in the lease with the building owner. Moreover, as the Commission previously has stated, “inadvertence...is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance.”<sup>11</sup> Similarly, the absence of any harm from a rule violation is not a mitigating factor.<sup>12</sup>

13. SDACH does not take issue with regard to the other violations found, but asks that we consider reducing the forfeiture based on its overall record of compliance with the Commission's Rules. We have reviewed our records and find no other violations against the licensee. Under similar circumstances, we have reduced proposed forfeitures, and find that doing so in this case is appropriate.<sup>13</sup> Consequently, we reduce SDACH's forfeiture amount from \$19,000 to \$15,200.

14. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that SDACH willfully and repeatedly violated Sections 1.903(a), 1.903(b), and 11.35(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$15,200 is warranted.

#### IV. ORDERING CLAUSES

15. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Seventh-Day Adventist Community Health Serv. of Greater NY, **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$15,200 for willfully and repeatedly violating Sections 1.903(a), 1.903(b), and 11.35(a).<sup>14</sup>

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified,

<sup>10</sup> *Intelsat North America LLC*, 21 FCCR 9246 (EB 2006).

<sup>11</sup> See *Emery Telephone*, Notice of Apparent Liability for Forfeiture, 13 FCC Rcd 23854, 23859 ¶ 12 (1998), *recon. dismissed in part and denied in part*, Memorandum Opinion and Order, 15 FCC Rcd 7181 (1999), citing *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). We also note that we are not persuaded by SDACH's claim that the forfeiture should be reduced because the inaccuracy was *de minimis*. It is indisputable that the coordinates provided to the Commission were inaccurate. Our rules require that applicants and licensees provide accurate information, without exception, and failure to do so constitutes a violation our rules.

<sup>12</sup> See *Liberty Cable Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16105 (2001); *Pacific Western Broadcasters, Inc.*, Memorandum Opinion and Order, 50 FCC 2d 819 (1975); *AGM-Nevada, LLC*, Forfeiture Order, 18 FCC Rcd 1476 (Enf. Bur. 2003); *Bureau D'Electronique Appliquee, Inc.*, Forfeiture Order, 20 FCC Rcd 17893 (SED Enf. Bur. 2005); *Western Slope Communications, LLC*, Forfeiture Order, 23 FCC Rcd 8384 (WR Enf. Bur. 2008).

<sup>13</sup> See e.g., *Cayuga County Community College*, Forfeiture Order, 2009 WL 1856467 (EB 2009).

<sup>14</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a), 1.903(b), 11.35(a).

the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>15</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures. Seventh-Day Adventist Community Health Serv. of Greater NY shall also send electronic notification on the date said payment is made to [NER-Response@fcc.gov](mailto:NER-Response@fcc.gov)

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Seventh-Day Adventist Community Health Serv. of Greater NY at its address of record and to counsel for SDACH at his address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

G. Michael Moffitt  
Regional Director, Northeast Region  
Enforcement Bureau

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<sup>15</sup> 47 U.S.C. § 504(a).